



## **II. AUTHORITY**

2. This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest, under the authority granted him by §§ 431.047 and 431.0585 of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §§ 431.001 *et seq.* ("TFDCA"). Section 431.047 authorizes the Attorney General to seek injunctive relief under certain circumstances and recover any costs, attorney fees, witness fees, and deposition expenses incurred in obtaining that relief. In addition, this action is brought pursuant to § 431.0585 which authorizes the Commissioner of Health to request the Attorney General to seek civil penalties in favor of the State in an amount not to exceed \$25,000 per day per violation of § 431.021 of the TFDCA.

2.1 This action is also brought by Attorney General GREG ABBOTT through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS, under the authority granted to him pursuant to § 17.47 of the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41 *et seq.*, ("DTPA"), upon the grounds that Defendants have engaged in false, misleading, and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by § 17.46(a) and (b) of the DTPA.

## **III. PARTY DEFENDANTS**

3. Defendant Post Oak Pharmacy, L.P. doing business as Lifecek Drug #19 located at 5018-A San Felipe, Houston, Harris County, Texas 77056 is a Texas limited partnership with its principal place of business at 1316 7th Street, Rosenberg, Fort Bend County, Texas 77471. Post Oak Pharmacy, L.P. has been served with process and made an appearance. No additional service is necessary at this time.

3.1 Defendant Lifecek Rosenberg Partners Ltd. doing business as Lifecek Drug #24 located at 13500 Highway 36, Needville, Fort Bend County, Texas 77461 is a Texas limited partnership with its principal place of business at 1316 7th Street, Rosenberg, Fort Bend County, Texas 77471. Lifecek Rosenberg Partners Ltd. has been served with process and made an appearance. No additional service is necessary at this time.

3.2 Defendant Lifecek, Inc. is a Texas corporation with its principal place of business at 1316 7th Street, Rosenberg, Fort Bend County, Texas 77471. Lifecek, Inc. has been served with process and made an appearance. No additional service is necessary at this time.

3.3 Defendant Medical Discount Pharmacy, L.P. is a Texas limited partnership with its principal place of business at 1316 7th Street, Rosenberg, Fort Bend County, Texas 77471. Medical Discount Pharmacy, L.P. has been served with process and made an appearance. No additional service is necessary at this time.

3.4 Defendant Lifecek Rosenberg, Inc. is a Texas corporation with its principal place of business is located at 1316 7th Street, Rosenberg, Fort Bend County, Texas 77471. Lifecek Rosenberg, Inc. has been served with process and made an appearance. No additional service is necessary at this time. Lifecek Rosenberg, Inc. is the General Partner of Medical Discount Pharmacy, L.P.; Post Oak Pharmacy, L.P.; and Lifecek Rosenberg Partners Ltd.

3.5 Defendant Bruce V. Gingrich is an individual residing in Sugar Land, Texas, who has been served with process and made an appearance. No additional service is necessary at this time.

#### **IV. VENUE**

4. Venue of this action lies in Harris County, Texas, pursuant to §§ 431.047(c) and 431.0585(d) of the TFDCA, because violations or threat of violations occurred in Harris County, and pursuant to § 17.47(b), because Defendants have done business in Harris County.

#### **V. PUBLIC INTEREST**

5. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff State of Texas has reason to believe that Defendants have caused and will cause immediate and irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

#### **VI. TRADE AND COMMERCE**

6. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined in § 17.45(6) of the DTPA.

#### **VII. ACTS OF AGENTS**

7. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that:

- A. Defendants performed or participated in such act or thing, or
- B. Defendants’ officers, agents, trustees, employees, representatives, or successors performed or participated in the act or thing on behalf of and under the authority of Defendants or otherwise acted under the guidance and direction of Defendants.

### **VIII. NOTICE BEFORE SUIT**

8. Pursuant to §17.47(a) of the DTPA, contact was made with the Defendants to inform them in general of the unlawful conduct alleged herein.

### **IX. NATURE OF DEFENDANTS' CONDUCT**

9. Defendant Medical Discount Pharmacy, L.P. ("Medical Discount") is a prescription drug distributor holding Texas Department of State Health Services ("TDSHS") Wholesale Distributor of Prescription Drugs License No. 102787, and is located at 1316 7th Street in Rosenberg, Texas. Defendant Lifecek Rosenberg, Inc. is the General Partner in this limited partnership. Medical Discount distributes various prescription drugs to the Lifecek Drug chain of pharmacies. A true and correct copy of correspondence from Bruce Gingrich to the TDSHS dated February 24, 2009, without attachments, is attached hereto as Exhibit A, and incorporated by reference. In a TDSHS inspection report from April 2009, Medical Discount is referred to as a partnership between Defendant Bruce V. Gingrich ("Gingrich") and Defendant Lifecek, Inc. Defendant Gingrich is the individual most responsible for Defendant Medical Discount's operation.

9.1 Defendant Lifecek Inc. apparently is a partner with Medical Discount and is located at the same physical address in Rosenberg, Texas.

9.2 Defendant Gingrich has previously represented himself in correspondence to the TDSHS to be the CEO and Owner of Lifecek Drug, Inc., Lifecek, Inc., and Medical Discount Pharmacy, L.P. According to Gingrich, Medical Discount distributes prescription drugs to the Lifecek Drug chain, which is comprised of twenty-two pharmacies located throughout the state of Texas. (Exhibit A at 1, ¶ 2). Defendant Gingrich identifies himself as the sole owner of the

chain. *Id.* at 2, ¶ 4. Accordingly, Gingrich directed and controlled the operations of Defendants' businesses and thus knew or should have known about all of the Defendants' conduct.

9.3 According to Texas Secretary of State documents, Gingrich is the Chief Executive Officer of Medical Discount Pharmacy, L.P. and President and Director of Lifecek Rosenberg, Inc. and Lifecek, Inc. Mr. Gingrich is also listed as the President and Director of at least four other entities related to the Lifecek Drug pharmacy chain. In fact, all of the documents filed with the Texas Secretary of State that are associated with the Lifecek Drug chain contain some reference to Gingrich.

9.4 On February 10 and February 13, 2009, the TDSHS conducted an inspection of Medical Discount's location at 1316 7th Street, Rosenberg, Texas 77471 ("the Facility"), and detained prescription drugs. Ms. Uduak Isong, an Executive Assistant with Medical Discount, was present during this inspection. Investigators noted the following: possessing a prescription drug bottle that contained no manufacturing information (sample taken)<sup>1</sup>; repackaging prescription drugs without being licensed as a drug manufacturer with the TDSHS; and purchasing prescription drugs from firms not licensed to distribute prescription drugs in the state of Texas.

9.5 During the inspection, Ms. Isong explained to investigators that Medical Discount ordered Lipitor in bulk, and Ms. Valorie Gingrich, who Ms. Isong referred to as the Director of Pharmacy Operations with Lifecek, Inc., opened the bottle and placed a number of pills into smaller bottles that would then go to the individual Lifecek Drug pharmacies. These smaller bottles contained a new label that failed to include information required by federal and state drug laws. Failing to include such information on the label of a drug misbrands the drug in violation

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<sup>1</sup> Investigators identified a prescription bottle with 49 Lipitor 40mg, lot 14197V, expires October 2010, stored with active inventory and containing a typed label with no manufacturing information on the bottle.

of the TFDCA. A true and correct copy of a picture of repackaged Lipitor is attached hereto as Exhibit B, and incorporated by reference.

9.6 Defendant Lifecek, Inc. is not licensed with the TDSHS to manufacture prescription drugs, which includes the repackaging and relabeling of drugs. To repackage or relabel drugs to then distribute to pharmacies, Defendant Lifecek, Inc. would have to be licensed as a drug manufacturer. Thus, Defendant Lifecek, Inc. engaged in the repackaging and relabeling of prescription drugs without being licensed as a drug manufacturer with the TDSHS in violation of the TFDCA.

9.7 Defendants Medical Discount and Lifecek, Inc. received prescription drugs from Ocean Pharmed, L.L.C. ("Ocean Pharmed"), a South Carolina company, which is not licensed in Texas as a wholesale distributor of prescription drugs. A true and correct copy of Ocean Pharmed's Non-Dispensing Drug Outlet Permit in South Carolina is attached hereto as Exhibit C, and incorporated by reference. An entity that engages in the wholesale distribution of drugs outside this State must have a license issued by the TDSHS to engage in the wholesale distribution of prescription drugs in Texas, as required by Section 431.406 of the TFDCA. Medical Discount obtained prescription drugs through Ocean Pharmed, an entity not licensed with the TDSHS as a wholesale distributor of prescription drugs in Texas, and then distributed them. *See* Exhibit A. Therefore, all drugs obtained and/or distributed by any Defendant from Ocean Pharmed are deemed misbranded in violation of the TFDCA. Defendant Gingrich admitted to being unaware that a licensed out-of-state wholesale prescription drug distributor is required to be licensed by the TDSHS to engage in wholesale prescription drug distribution in Texas. *See* Exhibit A.

9.8 True and correct copies of invoices collected during the February inspection showing sales from Ocean Pharmed to Lifecek, Inc. for drugs such as Abilify, Lamictal, Seroquel,

Zyprexa, Effexor, Lexiva, and Kaletra are attached hereto as Exhibit D, and incorporated by reference. According to records of South Carolina, the licensed location of Ocean Pharmed is 123 Centrum Dr., Ste. 3, Irmo, SC 29063. However, the address displayed on the invoices provided by Defendants is "100 NorthEast drive (sic), suite (sic) 112, Columbia, SC 29203." See Exhibits C and D.

9.9 Defendant Lifecek, Inc. purchased and received prescription drugs from Ocean Pharmed, a wholesale distributor of prescription drugs not licensed in Texas, for the purpose of continued distribution of the prescription drugs to pharmacies. (Exhibit D). Thus, Defendant Lifecek, Inc. also obtained and then distributed prescription drugs purchased from a wholesaler not licensed with the TDSHS to distribute prescription drugs in Texas, in violation of the TFDCA. In addition, by doing so, Lifecek, Inc. itself also engaged in the wholesale distribution of drugs in Texas without being licensed by the TDSHS as required by Section 431.402 of the TFDCA. Lifecek, Inc. also had prescription drugs billed to and shipped to it by another company for the purpose of continued distribution of the prescription drugs to pharmacies. True and correct copies of invoices from Altec Medical Incorporated are attached hereto as Exhibit E, and incorporated by reference. All drugs obtained and/or distributed by Lifecek, Inc. are deemed misbranded in violation of the TFDCA.

9.10 Defendant Medical Discount also indicated receipt of drugs from a company called Pharmamedical Recourses, Inc.<sup>2</sup> True and correct copies of invoices from Pharmamedical Recourses, Inc. ("Pharmamedical Recourses") are attached hereto as Exhibit F, and are

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<sup>2</sup> No company by the name of Pharmamedical Recourses, Inc. has ever been licensed with the TDSHS. However, a company called Pharmamedical Recourse, Inc. was licensed (License No. 0064347) with the TDSHS, and such license expired on February 3, 2009. Additionally, Antonio Herrera, the operator of Pharmamedical Recourse, Inc., indicated to a TDSHS investigator in October 2008 that Pharmamedical Recourse ceased doing business in March of 2008 and vacated its location at 2223 Vantage St. in Dallas, Texas, in August of 2008.



incorporated by reference. During the February inspection, Ms. Isong identified a gentleman named Alex Oria as the contact person for Ocean Pharmed and Pharmamedical Recourses, Inc. Further, Defendant Gingrich identified Mr. Oria as his broker during a TDSHS investigation in April 2009, and also stated in correspondence sent to the TDSHS on June 4, 2009, that Mr. Oria represented Pharmamedical Recourse. A true and correct copy of correspondence from Bruce Gingrich to the TDSHS dated June 4, 2009, without attachments, is attached hereto as Exhibit G, and incorporated by reference. Mr. Oria operates a company called Healthcare Marketing Consultants, Inc., which is not licensed as a wholesale prescription drug distributor in Texas as required by Section 431.402 of the TFDCA. A true and correct copy of Healthcare Marketing Consultants, Inc.'s W-9 is attached hereto as Exhibit H, and incorporated by reference, and a true and correct copy of TDSHS correspondence to Mr. Oria dated April 6, 2009, is attached hereto as Exhibit I, and incorporated by reference. Medical Discount therefore obtained prescription drugs through brokers not licensed by the TDSHS as wholesale distributors of prescription drugs in violation of the TFDCA. All drugs obtained through Alex Oria and Healthcare Marketing Consultants, Inc. and held and/or distributed by Medical Discount are deemed misbranded in violation of the TFDCA.

9.11 On February 10, 2009, the TDSHS detained all drug products obtained from suppliers for which Medical Discount could not provide documentation evidencing a current license to distribute prescription drugs in Texas as misbranded drugs in violation of the TFDCA. A true and correct copy of Detention No. 06-810 is attached hereto as Exhibit J, and incorporated by reference.

9.12 On April 2 and 3, 2009, investigators returned to Medical Discount's facility to inventory all of the prescription drugs that were previously detained while Gingrich was present. A true

and correct copy of the Inventory of Detained Products is attached hereto as Exhibit K, and incorporated by reference. During this time, investigators observed the following violations: receiving drugs from unlicensed wholesalers and storing expired drugs with active inventory.

9.13 Investigators also observed Medical Discount in the possession of what could be counterfeit drugs due to the presence of lot numbers that appeared inconsistent with the lot number definition used by the manufacturer of that drug, Bristol-Myers Squibb Company ("BMS"), as well as other discrepancies. Suspecting the drugs were possibly counterfeit, investigators gathered ten subsamples<sup>3</sup> of Abilify. A true and correct copy of a Receipt for Samples is attached hereto as Exhibit L, and incorporated by reference. Defendant Gingrich identified Ocean Pharmed as the supplier of the sampled products and stated he used a broker, Alex Oria, to conduct sales with Ocean Pharmed.

9.14 Section 431.002 of the TFDCa defines a counterfeit drug as one with a container or labeling, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor. Some of the subsamples of Abilify were sent to BMS for a determination of authenticity. BMS determined that some of the lot numbers were not legitimate lot numbers used by BMS and the products were not packaged in a manner consistent with BMS procedures. A true and correct copy of a Memorandum from BMS dated June 3, 2009, is attached hereto as Exhibit M, and incorporated by reference. Therefore, the

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<sup>3</sup> Only a sample was collected. Thus, more lot numbers of Abilify may be in question than just those shown on the Receipt for Samples.

Abilify supplied by Ocean Pharmed to Defendant Medical Discount for distribution to the Lifecek Drug pharmacies was counterfeit and in violation of the TFDCA.

9.15 Investigators further reported that Lifecek Drug #19 and Lifecek Drug #24 also sold drugs to Medical Discount. True and correct copies of invoices from Lifecek Drug #19 and Lifecek Drug #24 are attached hereto as Exhibit N, and incorporated by reference. However, neither Lifecek Drug #19 nor Lifecek Drug #24 is licensed with the TDSHS as a wholesale distributor of prescription drugs as required by Section 431.402 of the TFDCA. Therefore, all drugs distributed by either Lifecek Drug #19 or #24 are misbranded in violation of the TFDCA. Defendant Gingrich as the self-identified sole owner of the Lifecek Drug chain thus engaged in the wholesale distribution of prescription drugs without being licensed as a wholesale drug distributor by the TDSHS in violation of the TFDCA.

9.16 It also appears that Medical Discount received drug products from another currently unlicensed drug distributor named Universal Pharmacy Consultants, Inc., which was operated by a gentleman named Peter Nwangwu. A true and correct copy of correspondence from Bruce Gingrich dated April 16, 2009, with a detained inventory list attached, is attached hereto as Exhibit O, and incorporated by reference, and true and correct copies of invoices from Universal Pharmacy Consultants dated July 24, August 5, and August 13, 2008, are attached hereto as Exhibit P, and incorporated by reference. On September 28, 2006, the TDSHS received e-mail correspondence from Peter Nwangwu indicating Universal Pharmacy Consultants was no longer in operation. A true and correct copy of e-mail correspondence from Peter Nwangwu to the TDSHS is attached hereto as Exhibit Q, and incorporated by reference. Furthermore, although Universal Pharmacy Consultants was previously licensed as a food, drug, and medical device distributor, such license expired on June 17, 2007, and was not renewed. A true and correct copy

of a Business Records Affidavit from the TDSHS is attached hereto as Exhibit R, and incorporated by reference. Thus, the invoices of Universal Pharmacy Consultants, Inc. post-date its license expiration. Additionally, according to the Texas Secretary of State, Mr. Nwangwu was President and Director of a company called Universal Pharmacy Consultant Services, Inc., but its charter or certificate of authority was forfeited on February 9, 2007. True and correct copies of Texas Secretary of State records are attached hereto as Exhibit S, and incorporated by reference. All drugs obtained and/or distributed by Defendant Medical Discount from Universal Pharmacy Consultants, Inc., are deemed misbranded in violation of the TFDCA.

#### **X. VIOLATIONS OF THE TFDCA**

10.1 Prescription drugs purchased in Texas from a source not licensed by the TDSHS are deemed misbranded as federal law holds that all drugs must have adequate directions for use by a layperson, which means directions under which a layperson can use a drug safely for its intended use as determined by the manufacturer. 21 CFR § 201.5. Prescription drugs, including those possessed and held by Defendants Medical Discount and Lifecek, Inc., are granted an exemption from adequate directions for use by a layperson if they are in the possession of a practitioner licensed to use or order their use or in the possession of a person or entity licensed to distribute such drugs in Texas. 21 CFR § 201.100. The entities that Defendants Medical Discount and Lifecek, Inc. purchased or obtained drugs from, identified as Ocean Pharmed, Lifecek, Inc., Pharmamedical Recourses, Inc., Healthcare Marketing Consultants, Inc., Alex Oria, Lifecek Drug #19, Lifecek Drug #24, Gingrich, and Universal Pharmacy Consultants, are not practitioners. In order for the exemption from adequate directions for use to continue, Defendants' sources for prescription drugs must be licensed as prescription drug distributors in Texas. The above-named entities are not licensed as wholesale prescription drug distributors in

Texas. Therefore, all of the drugs purchased from them are misbranded pursuant to Section 431.112(e)(1) in that these prescription drugs are not in the hands of a practitioner or a licensed prescription drug distributor as required to keep the exemption from adequate directions for use as required by federal law.

10.2 Defendant Lifecek, Inc. repackaged and relabeled Lipitor which makes it a manufacturer of this drug without being licensed as a prescription drug manufacturer with the TDSHS as required by the TFDCA. Since Defendant Lifecek, Inc. failed to place information required by federal and state drug laws on the label of Lipitor, Defendant Lifecek, Inc. misbranded this drug pursuant to Section 431.112(a)(1), (c), and (e)(1).

#### **XI. PROHIBITED ACTS UNDER THE TFDCA**

11. Defendants, based on all of the conduct alleged above, have committed or caused to be committed the following acts prohibited and declared to be unlawful by Section 431.021 of the TFDCA:

- A. Introducing and delivering for introduction into commerce misbranded drugs in violation of TFDCA § 431.021(a);
- B. Misbranding drugs in commerce in violation of TFDCA § 431.021(b);
- C. Receiving in commerce drugs that are misbranded, and the delivery or proffered delivery thereof for pay or otherwise in violation of TFDCA § 431.021(c);
- D. Manufacturing within this state drugs that are misbranded in violation of TFDCA § 431.021(h);
- E. Selling or dispensing, or the holding for sale or dispensing, of a counterfeit drug in violation of TFDCA § 431.021(l)(3);

- F. Engaging in the wholesale distribution of drugs in this state without obtaining a license issued by the department under Subchapter N of the TFDCA, as applicable in violation of TFDCA § 431.021(x);
- G. Failing to submit an application required by the department in violation of TFDCA § 431.021(bb);
- H. Receiving a prescription drug that is misbranded, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise in violation of TFDCA § 431.021(jj); and
- I. The alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded in violation of TFDCA § 431.021(kk);

## **XII. VIOLATIONS OF THE DTPA**

12. Defendants, based on all of the conduct as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful by DTPA §17.46(a). Specifically, Defendants have violated §17.46(b) of the DTPA as follows:

- A. Causing confusion or misunderstanding as to the approval of drugs offered for sale and sold by Defendants in violation of § 17.46(b)(2) of the DTPA;
- B. Representing that drugs sold by Defendants have approval which they do not have in violation of §17.46(b)(5) of the DTPA; and
- C. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to

induce the consumer into a transaction which the consumer would not have entered had the information been disclosed in violation of DTPA §17.46(b)(24).

### **XIII. TRIAL BY JURY**

13. Plaintiff requested a jury trial and the jury fee has been tendered to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOV'T. CODE ANN. § 51.604.

### **XIV. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

14. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate and irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below. Pursuant to DTPA §17.47(a) and (b), the Court may issue temporary restraining orders and temporary and permanent injunctions to prevent continuing violations of the DTPA. The court shall issue such injunctive relief without requiring a bond. DTPA §17.47(b).

### **XV. DETENTION AND DESTRUCTION**

15. Section 431.048 of the TFDCA authorizes the TDSHS to detain drugs deemed misbranded that are found in Texas. Pursuant to Section 431.051 of the TFDCA, a court shall order the destruction of a detained article if the court finds that the article is misbranded.

15.1 To date an acceptable resolution of the Detention of Defendants' drugs that were deemed misbranded under the TFDCA has not been reached, so it continues to remain in effect with the exception of an agreed release of the Protonix drug articles supplied by Matrix Distributors, Inc., and the voluntary destruction of all Pluronic Gel.

## **XVI. PRAYER**

16. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued<sup>4</sup>; and upon final hearing a PERMANENT INJUNCTION, which will be supported by evidence at trial, be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Engaging in the wholesale distribution of drugs in this state without being licensed by the TDSHS;
- B. Manufacturing drugs without being licensed by the TDSHS;
- C. Manufacturing drugs that are misbranded;
- D. Introducing and delivering for introduction into commerce misbranded drugs;
- E. Misbranding drugs in commerce;
- F. Receiving in commerce drugs that are misbranded and delivering them for pay or otherwise;
- G. Receiving in commerce any drug from an unlicensed wholesale drug distributor;
- H. Selling or dispensing counterfeit drugs;
- I. Holding for sale or dispensing counterfeit drugs;
- J. Failing to submit any application required by the TDSHS;
- K. Storing expired prescription drug inventory with active, unexpired inventory;

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<sup>4</sup> The parties entered into an Agreed Temporary Injunction on August 12, 2009.



- L. Receiving a prescription drug that is misbranded, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for payment or otherwise;
- M. Altering, mutilating, destroying, obliterating, or removing all or any part of the labeling of a prescription drug that results in the prescription drug being misbranded.
- N. Causing confusion or misunderstanding as to the approval of drugs offered for sale;
- O. Representing that drugs offered for sale or sold have approval which they do not have; and
- P. Failing to disclose all information concerning drugs offered for sale or sold.

16.1 Plaintiff further prays that pursuant to Sections 431.050 and 431.051 of the TFDCA that upon final hearing this court will order the condemnation of all drugs that are currently detained, and will order Defendants, at their own expense, to destroy under the supervision of an authorized agent of the TDSHS all drugs that are currently detained by the TDSHS pursuant to § 431.051 of the TFDCA.

16.2 In addition, Plaintiff respectfully prays that this Court will:

- A. Adjudge against Defendants civil penalties in favor of the STATE OF TEXAS in the amount of \$25,000 per day per violation of TFDCA § 431.021 as provided in TFDCA § 431.0585;
- B. Order Defendants to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOV'T. CODE § 402.006(c);
- C. Order Defendants to pay to the Office of the Attorney General and to the Texas Commissioner of Health their reasonable expenses in obtaining injunctive relief,

including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses pursuant to TFDCA § 431.047(d).

16.3 In addition, Plaintiff respectfully prays that this Court will:

- A. Adjudge against each Defendant civil penalties in favor of the STATE OF TEXAS in an amount up to \$20,000 per violation as allowed by law pursuant to TEX. BUS. & COM. CODE §17.47(c) and an additional amount not to exceed more than \$250,000 for acts and practices calculated to acquire or deprive money or other property from a consumer who was sixty-five (65) years of age or older when the act or practice occurred;
- B. Order Defendants to pay restitution, as provided by law;
- C. Order Defendants to pay Plaintiff's attorney fees and costs of court pursuant to TEX. GOV'T. CODE § 402.006(c);
- D. Order Defendants to pay all prejudgment and post judgment interest on all awards of restitution, damages, or civil penalties as provided by law.

16.4 Grant all other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

DAVID S. MORALES  
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA  
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**ATTORNEYS FOR THE STATE OF TEXAS**  
**SPIN NO. 99999928**

**CERTIFICATE OF SERVICE**

This is to certify that *Plaintiff's First Amended Petition and Application for Temporary and Permanent Injunction* was:

☐ sent by U.S. Mail, postage prepaid, certified, return receipt requested  
☐ sent by fax to the telecopier number shown below  
☒ hand delivered to the law office at the address as shown below

to:

DALE JEFFERSON  
State Bar No. 10607900  
GARY PATE  
State Bar No. 24029763  
Martin, Disiere, Jefferson & Wisdom, L.L.P.  
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Houston, TX 77002  
713-632-1700 - Telephone  
713-222-0101 - Facsimile

on the 22nd day of December, 2009.

  
Roberta H. Nordstrom